

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

FUSION ELITE ALL STARS , et al., Plaintiffs, v. VARSITY BRANDS, LLC , et al., Defendants.	Case No. 2:20-cv-02600-SHL-tmp JURY TRIAL DEMANDED
AMERICAN SPIRIT AND CHEER ESSENTIALS, INC. , et al., Plaintiffs, v. VARSITY BRANDS, LLC , et al, Defendants.	Case No. 2:20-cv-2782-SHL-tmp JURY TRIAL DEMANDED
JONES , et al., Plaintiffs, v. BAIN CAPITAL PRIVATE EQUITY , et al., Defendants.	Case No. 2:20-cv-02892-SHL-tmp JURY TRIAL DEMANDED

**DECLARATION OF KATHERINE VAN DYCK IN SUPPORT OF
PLAINTIFFS' JOINT MOTION TO MODIFY SCHEDULING ORDERS**

I, Katherine Van Dyck, declare the following under penalty of perjury:

1. I am an attorney with the law firm of Cuneo Gilbert & LaDuca LLP, counsel for Plaintiffs, and Interim Co-Lead Counsel for Direct Purchasers in the above-captioned matter,

Fusion Elite, et al. v. Varsity Brands, et al., Case No. 2:20-cv-02600-SHL-cgc. I make this affidavit on personal knowledge and review of my files, except as otherwise indicated. I submit this declaration in support of Plaintiffs' Joint Motion to Modify Scheduling Orders.

2. Plaintiffs Fusion Elite All Stars, Spirit Factor LLC d/b/a Fuel Athletics, Stars and Stripes Gymnastics Academy Inc. d/b/a Stars and Stripes Kids Activity Center, Kathryn Anne Radek, Lauren Hayes, and Janine Cherasaro ("*Fusion Elite* Plaintiffs") served Defendants Varsity Brands, LLC, Varsity Spirit, LLC, and Varsity Spirit Fashion & Supplies, LLC (collectively, "Varsity") and U.S. All Star Federation, Inc. ("USASF") with requests for production of documents pursuant to Rule 34 of the Federal Rules of Civil Procedure on October 16, 2020 and October 19, 2020. *Fusion Elite* Plaintiffs also served Varsity and USASF with interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure on November 25, 2020.

3. At the time Plaintiffs served their Requests for Production, the scheduling order they had just negotiated called for production of responsive data 100 days later, on January 25, 2021, and document production 165 days later, on March 30, 2021. (No. 20-cv-2600, Dkt. 61 at 2.) The parties' discovery negotiations significantly shifted these the document and data production dates.

4. Counsel for *Fusion Elite* Plaintiffs, Varsity, and USASF engaged, from December 2020 to May 2021, in near weekly telephone calls and accompanying correspondence regarding Varsity and USASF's responses to *Fusion Elite* Plaintiffs' requests for production. The parties have negotiated the proper custodians' files and the time period for which they will be searched, appropriate search terms, the time period and data fields necessary for transactional data, and the form in which documents, ESI, and transactional data would be produced.

5. Varsity began producing its data in March 2021, and, while it made several document productions in December 2020 and early 2021, it began the bulk of its custodial document production on June 14, 2021. It made additional productions in July, August, September, October, and November 2021, totaling 96,783 documents.¹ Counsel has, simultaneously, continued to engage with Varsity regarding the completeness of its productions and the interpretation of various fields appearing in Varsity's transactional data, as well as deficiencies in Varsity's transactional data. Certain of Varsity's document and data productions have occurred up to nine months later (for data) and 7 months later (for documents) than what the parties originally contemplated when they negotiated the deadlines at issue here.

6. Since the Court's ruling on *Fusion Elite* Plaintiffs' motion to compel discovery from USASF, those parties have exchanged multiple letters, emails, and phone calls regarding search terms, custodians, and time frame. Based on the parties' discussions, over the course of the last four and a half months, they have reached agreement with USASF regarding most ESI parameters. In the interim, USASF has produced 8,023 documents on a rolling basis. Productions for numerous of USASF's custodians are not yet complete, as the search term negotiations are not complete.

7. In light of the pending Motion to Strike, *Fusion Elite* Plaintiffs, Varsity, and USASF have agreed that Plaintiffs will withdraw Requests related to sex abuse, without prejudice, until and when the Motion to Strike is denied and that Plaintiffs and Varsity will promptly meet and confer regarding the scope of the Requests at that time.

8. *Fusion Elite* Plaintiffs have served 24 subpoenas duces tecum on non-party businesses between November 2, 2020 and the present:

¹ This figure does not include documents Varsity produced the day this Motion was filed.

Subpoenaed Party	Date of Service	Documents Produced	Subpoenaed Party	Date of Service	Documents Produced
Bain Capital LP	11/2/2020	19	Cheer and Dance Extreme	2/17/2021	-
Charlesbank Capital Partners	11/2/2020	25	Diamond Cheer & Dance	2/17/2021	-
Partners Group AG	11/2/2020	425	Midwest Cheer and Dance	2/17/2021	-
Ares Capital Corp.	11/12/2020	6,762	Xtreme Spirit	2/17/2021	-
Crescent Capital Group	11/12/2020	1,200 pages	Deep South	2/18/2021	-
Jefferies LLC	11/12/2020	77,028	Jamz Cheer & Dance	2/18/2021	-
The Goldman Sachs Group	11/12/2020	1,794	Redline Championships	2/18/2021	-
Rebel Athletic Inc.	11/12/2020	9	Victory Athletics LLC	2/18/2021	-
GK Elite Sportswear Inc.	11/12/2020	-	Worldwide Spirit Association	2/18/2021	-
Nfinity Athletic LLC	11/12/2020	-	Pricewaterhouse Coopers	9/29/2021	-
Barclays PLC	2/17/2021	-	Rubinstein Public Relations Inc.	10/27/2021	-
Cheer America	2/17/2021	-	Quinnipiac College	10/27/2021	-

9. Plaintiffs have engaged in discovery conferences with most of these businesses and individuals. Eight of those respondents have provided approximately 86,000 documents after discussions regarding the scope of the documents sought. Rebel Athletic Inc. has steadfastly

refused to produce nearly all of its responsive documents and data, and *Fusion Elite* Plaintiffs filed an enforcement action in the Northern District of Texas—*Fusion Elite All Stars, et al. v. Rebel Athletic Inc.*, No. 3:21-mc-00151—on July 9, 2021. Rebel has correspondingly asked for an order quashing the subpoena in its entirety, and the parties await a ruling from that court. Nfinity is likewise refusing to comply with its subpoena, and a similar enforcement action may be required.

10. *Fusion Elite* Plaintiffs served deposition and document subpoenas on two former Varsity employees, Brian Elza and Tres LeTard, on September 14, 2021. Mr. Elza's deposition took place on November 16 and 17, 2021. Mr. LeTard's deposition is scheduled for November 22, 2021. *Fusion Elite* Plaintiffs also served deposition and document subpoenas on former Varsity employee Marlene Cota on November 3, 2021, and Ms. Cota's deposition is tentatively scheduled for January 11, 2022.

11. *Fusion Elite* Plaintiffs served nine notices of deposition on Varsity on October 18, 2021 pursuant to Rule 30(b)(1), scheduling the depositions of current Varsity employees. Depositions of Varsity employees and executives are scheduled to take place on December 9 and 10, January 18 and 19, and February 1 and 2. Plaintiffs are waiting for Varsity to confirm available dates for the remaining five witnesses.

12. Varsity employee Damianne Albee's deposition, which was noticed by *Fusion Elite* Plaintiffs and *Jones* plaintiffs, was scheduled for November 18, 2021. When the Court granted Plaintiffs' motion allowing for additional deposition time where multiple notices are served, Varsity informed *Fusion Elite* Plaintiffs that Ms. Albee's deposition would have to end promptly at 5:00 pm and could not extend to the following day. The parties are now in the process of rescheduling the deposition.

13. Plaintiffs served a notice of deposition on Varsity, pursuant to Rule 30(b)(6), on November 15, 2021. Given the scope of the litigation, Plaintiffs anticipate that a large number of designees will be deposed on the topics covered in that notice.

14. Varsity requested the depositions of various plaintiff witnesses on October 14, 2021. Depositions of Lauren Fischer and Time Gurske of Plaintiff Spirit Factor are scheduled for December 7 and 9, 2021; the deposition of Rebecca Foster of Plaintiff Stars & Stripes is scheduled for December 21, 2021; and the deposition of Sarah Minzghor of Plaintiff Fusion Elite is scheduled for December 23, 2021. The parties are also negotiating dates for five other plaintiff depositions. Plaintiffs responded to Varsity and USASF's discovery requests in November and December 2020 and January and June 2021.

15. Eric Cramer and Mark Suter, who are also Interim Co-Lead Counsel in *Fusion Elite* and are taking depositions in this matter (including those of Mr. Elza and Mr. LeTard), are also counsel for direct purchaser plaintiffs in *In Re Capacitors Antitrust Litigation*, pending in the Northern District of California (No. 3:14-cv-03264-JD). A multi-week liability and damages trial is scheduled to begin in *Capacitors* on November 29, 2021, and both Mr. Cramer and Mr. Suter will be unavailable for depositions during that time.

16. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed this 18th day of November, 2021 in Washington, DC.

s/ Katherine Van Dyck
Katherine Van Dyck